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In re Application of Michael Curry et al.

Application No. 09/683,995

Filed: March 10, 2002

Attorney Docket No. 1049.002US1

Title: EMAIL MESSAGING PROGRAM WITH  
BUILT-IN VIDEO AND/OR AUDIO  
MEDIA RECORDING AND/OR  
PLAYBACK CAPABILITIES

:  
: **DECISION ON PETITION TO MAKE**  
: **SPECIAL UNDER 37 CFR 1.102(d)**  
:

This is a decision on the petition, filed April 24, 2003 under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02(II): Infringement, to make the above-identified application special.

M.P.E.P. §708.02, Section (II) sets out the prerequisites for a grantable petition under 37 C.F.R. §1.102(d) states in relevant part:

Section (II) Subject to a requirement for a further showing as may be necessitated by the facts of a particular case, an application may be made special because of actual infringement (but not for prospective infringement) upon payment of the fee under 37 CFR 1.17(h) and the filing of a petition accompanied by a statement by the applicant, assignee, or an attorney/agent registered to practice before the Office alleging:

- (A) That there is an infringing device or product actually on the market or method in use;
- (B) That a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and
- (C) That he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the pertinent prior art.

The petition meets the criteria of Section (II) by stating (A) "there is an infringing device or product actually on the market"; (B) a rigid comparison of the alleged infringing device, product or method with the claims of the application has been made, and that in his opinion some of the claims of the application are unquestionably infringed"; and (C) "a careful and thorough search of the prior art has been made and/or that Applicant has a good knowledge of the pertinent prior art".

The Petition is **GRANTED**.

*for Josie A. Ballato*

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